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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/059,564	01/29/2002	Jeffrey A. Martin	WMMG 3545	7937

321 7590 09/21/2005

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EXAMINER

LEVY, NEIL S

ART UNIT PAPER NUMBER

1615

DATE MAILED: 09/21/2005

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BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

MAILED
SEP 21 2005
GROUP 1600

Application Number: 10/059,564
Filing Date: January 29, 2002
Appellant(s): MARTIN ET AL.

DONALD LEAVITT

For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 7/12/05 appealing from the Office action
mailed 2/25/05.

SD

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

No amendment after final has been filed.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

us006416752b1	RICHARDSON	7-2002
us005096710a	MINAGAWA	5-1992

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

ClaimS 1,2,4-6,8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Richardson

The rejection was based on the disclosure by Richardson of micro-crystalline cellulose as a base bait, compacted(lines 65-67-" -termite bait composition may be compressed into tablets or granular form". Active termiticides is at claim 2; the cellulose itself is attractant at claim 1; other attractants are shown at example 1-mushrooms, with the cellulose. The density is not specified, only the particle size is 1-100 microns (col 2, lines 31-39). Considerations of handling and safety (col 3, first paragraph) provide an obvious basis for an operator to desire a compact form, less handling would be required. One could compress to any bulk density desired, up to the absolute density of the cellulose used. Thus, the specific density claimed is obtainable, and not seen as an inventive concept. The baits used are shown as preferred over wood; The table on column 5 shows sample 025 effective, only the Shitake mushroom combination with the cellulose was more consumed

Claims 1-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Richardson in view of Minagawa.

Richardson provides termite bait, but is not explicit as to its density. Minagawa also makes termite baits similar to Richardson of dextrin - a purified cellulose, and with crystalline cellulose (col. 4, lines 4-65) using conventional procedures.

The baits are normally compressed with pressure of 10-500 kg/cm squared. The resulting tablets are 1.033g/cc and are optimized to prevent cracking, a problem seen when attractant materials are mixed with crystalline cellulose (col. I lines 48-60).

It would have been obvious to a person of ordinary skill in the art at the time the invention was made desiring to utilize compressed baits, to use any of recognized means, including those of Richardson, with particular density achieved as shown in normal tableting procedures, in order to optimize bait to control the target pest of concerns.. Motivation for Richardson /Minagawa combination, is that of controlling termites, with optimization of the bait characteristics. The particular ingredients are disclosed by Richardson, with added ingredients seen in the more general baits of Minagawa, directed not only at termite control.

There is no distinguishing disclosure of the instant composition as providing any

unobvious and/or unexpected results obtained since the prior art is well aware of the use of pheromones, foods, nutrients as attractant, with insecticides, in the control of insects.

The selection of bait, nutrient and pheromones are result effective parameters chosen to obtain the desired insect control. The compression features and bait form are known by the Artisan, and controllable at will in order to optimize economy and attractive parameters, for example- such as increasing storage capability, decreasing cracking, decreasing number of times of handling bait tubes , increasing attractiveness to particular insect species.

(10) Response to Argument

Appellant argues Richardson is not obvious because one must try to achieve 1.033 g/cc, given Richardson. There is no inventive concept evident to examiner regarding adjusting the density of a material, in this case Microcrystalline or Purified cellulose, or combinations therewith (the language is in comprising guise). The presence of compressed cellulose at any particular density is a physical function obtainable at will. Appellant's argument for motivation to perform compression is not convincing, the compressed forms are not limited in Richardson's disclosure of compressing.

As to the combination with—Minagawa, Appellant argues Minagawa is much lower than the compression strength of 516-1377 of the instant disclosure. However, given that both Richardson & Minagawa compress, we see Minagawa's 500 about the

same as appellant's 516. Minagwa also stated these are normal levels, and the operative tablet was exemplified as a cockroach bait. The teachings of Minagawa, provide a basis for reaching a range of density levels, but do not preclude higher or lower levels suitable for specific insect control.

Appellant also argues examiner did not consider the declarations; that's not correct, but they were found wanting. The argument is that the greater density permits 93 grams of bait, compared to 30 grams of non-compacted bait in the same bait tube volume, thus the compacted lasts longer before tube must be refilled. Examiner finds this a physical property, not surprising, not unexpected, not unobvious.

The Forschler declaration is directed at feeding differences. Unfortunately, the cited brochure did not identify the tablets or the density of each test material, & it was not clear which material was better. However, even the best was only 33% effective, Richardson's Shitake/microcrystalline cellulose bait combination was better

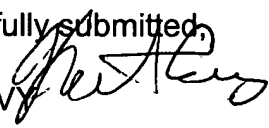
(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

NEIL LEVY


NEIL S. LEVY
PRIMARY EXAMINER

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(conferred)